



## **Frequently Asked Questions: Conservation Leasing in Proposed Public Lands Rule**

The BLM's proposed Public Lands Rule would establish a framework to ensure healthy landscapes, abundant wildlife habitat, clean water and balanced decision-making on our nation's public lands. A key component of that framework is developing reliable pathways for restoration and mitigation efforts. Conservation leases are a tool that can be used to carry out durable restoration and mitigation on public lands, relying on the BLM's authority under the Federal Land Policy and Management Act to regulate through appropriate instruments the use, occupancy, and development of the public lands.

### **What would conservation leases be used for?**

The proposed Public Lands Rule provides for conservation leases to be used for two purposes: restoration and compensatory mitigation. Consistent with how the BLM promotes and administers other uses, conservation leases would be a tool available to entities seeking to restore public lands or to provide mitigation for a particular action.

For example, a non-profit organization or conservation district could put people to work restoring wildlife habitat and, through a conservation lease, be assured the work could take hold and flourish. Such activities could also be part of compensatory mitigation, which compensates the public for the impacts of development on public land through investments in restoration and other mitigation measures.

Carrying out compensatory mitigation on public lands has faced many challenges due to issues with durability – the assurance that the mitigation measures will be effective for the duration of the impacts resulting from the associated public land use. Conservation leases provide a reliable approach to facilitate development, responding to feedback from state, local, and industry partners, so that carrying out compensatory mitigation on public lands would be a viable option.

### **Where would conservation leases be issued?**

The BLM would determine whether a conservation lease is an appropriate mechanism based on the context of each proposed conservation use and application. In evaluating an application, the authorized officer will evaluate the feasibility of the proposed conservation use and the impacts, if any, on the environment, the public or other benefits from the land use.

Conservation leases would have defined purposes, such as specific restoration activities or mitigation measures, which the BLM would approve and oversee. The leases could be issued to a qualified individual, business, non-governmental organization, or Tribal government.

The proposed rule does not contemplate that the BLM would require conservation leases. The BLM would respond to leasing proposals from other entities but would maintain discretion as to whether to issue a conservation lease.

Appropriate places for conservation leasing on public lands would include degraded habitats in need of restoration, as well as intact landscapes and functioning ecosystems that can serve as compensatory mitigation for a particular action. For example, as part of authorizing a renewable energy project on public lands, the BLM and the project proponent may agree to compensate for loss of wildlife habitat by restoring or enhancing other habitat areas on public lands. A conservation lease could be used to protect the restoration and enhancement actions.

### **How would conservation leases be issued?**

The proposed rule would establish the process for applying for and granting conservation leases, terminating or suspending them, determining noncompliance, and setting bonding obligations. BLM would issue guidance to further detail these processes, similar to how the BLM issues guidance for other types of leases and rights-of-way. Under a conservation lease, an external entity could propose to enter into an agreement with the BLM to help achieve restoration or mitigation outcomes on public lands. The BLM retains discretion as to whether to issue a conservation lease in response to a proposal.

Conservation leases would be issued for a term consistent with the time required to achieve their objective. A conservation lease issued for the purpose of compensatory mitigation would have a term as long as the impact it is offsetting. Other conservation leases would be issued for a maximum of 10 years, which would be extended if necessary to serve the purposes for which the lease was first issued.

### **What happens when a conservation lease ends?**

When a conservation lease ends, those lands will be managed as set out in the governing land use plan.

### **What impacts would conservation leases have on other multiple uses?**

Conservation leasing would be one use that is part of multiple use management along with other uses managed by the BLM, such as energy development, mining, grazing, timber, and outdoor recreation. The BLM expects that conservation leases would help facilitate responsible development by providing a path for entities to pursue restoration and compensatory mitigation activities.

Conservation leases would not disturb existing authorizations, valid existing rights, or state or Tribal land use management, and they would not preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the identified activities. For example, where land is already being grazed in a way that protects habitat, that use would be expected to continue and could be part of the activities supported by a conservation lease, so a rancher could be a partner in restoration efforts. If the proposed activities in a conservation lease would conflict with existing authorizations, such as if a specific type of restoration would not be compatible with grazing and the proposed location is already subject to a grazing authorization, then the conservation lease could not be issued on those particular lands. In addition, conservation leases would generally preserve public access for casual use such as recreation.

### **Examples of how a conservation lease could function:**

Challenges with ensuring durability for restoration and mitigation projects have led developers, mitigation banks, non-governmental organizations, and state agencies to:

- seek out private or state lands, instead of mitigating impacts to public lands by carrying out mitigation actions *on* public lands;
- select sites based on durability rather than the most comparable resources, arguably decreasing the effectiveness of mitigation; and/or
- undertake complex and time-consuming processes to increase durability of mitigation sites.

There is a demonstrated desire for a tool like conservation leases based on previous projects that have attempted to use compensatory mitigation to offset impacts to public lands resources. The examples below are hypotheticals to show how conservation leases might function as one option for supporting compensatory mitigation and restoration.

*A solar energy project is proposed on public lands, in an area that has wilderness and recreation values.*

The environmental analysis for a proposed solar project identifies lands with wilderness characteristics in the project area, and associated recreation values for hiking, camping, hunting, mountain biking and other experiential activities on the affected public lands. The impacts to these wilderness and recreation resources cannot be avoided or mitigated through project design, and so the BLM determines that compensatory mitigation is warranted.

The BLM could issue a conservation lease to a qualified entity offset the unavoidable impacts by restoring or protecting other wilderness and recreation values for the duration of the impact of the solar project. Existing uses on the conservation lease would continue, such as grazing and public access, and new uses would be authorized if they are consistent with the purpose of the conservation lease.

*A non-profit organization wants to restore mule deer habitat.*

A non-profit organization with restoration and stewardship capacity is interested in improving mule deer habitat on public lands, and would like to ensure that its investment in the landscape will have time to succeed – to “take root.”

The BLM would issue the organization a conservation lease that stipulates the specific restoration and stewardship activities that may be carried out, such as fence removal, riparian restoration and road rehabilitation. The BLM would exercise oversight of these activities, require a bond to provide for reclamation of any resulting adverse impacts, and retain authority to suspend or terminate the conservation lease in the event the lease holder fails to comply with applicable requirements, fails to use the lease for its intended purpose, or cannot fulfill the lease’s purpose. The conservation lease would be issued for a renewable 10-year period, and existing uses would continue on the leased lands.

*A proposed transmission line across public lands would impact imperiled bird species.*

The environmental analysis for a proposed interregional transmission line finds the project would have unavoidable impacts on a bird species that is managed as imperiled by the BLM and by state governments where the transmission line is proposed. The authorizing agencies determine that compensatory mitigation is warranted to address impacts to the species, and the best remaining habitat is found on BLM-managed public lands.

In this case, the BLM would issue a conservation lease to a qualified entity to conserve the bird’s habitat on public lands, and would stipulate what conservation measures would entail to ensure

they meet management objectives. The conservation lease would be able to last for the duration of the transmission line's impact, and could be terminated or modified in response to changing habitat conditions.